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28395 7590 08/17/2009 BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			EXAMINER SCHWARTZ, CHRISTOPHER P	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DALE CROMBEZ and JOHN CZUBAY

Appeal 2007-001458
Application 10/708,516
Technology Center 3600

Decided: August 17, 2009

Before WILLIAM F. PATE III, LINDA E. HORNER, and
KEN B. BARRETT, *Administrative Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 1-20. These are the only claims in the application. We have jurisdiction over the appeal under 35 U.S.C. §§ 134 and 6.

The claimed subject matter is directed to a method for varying the starting point for diminishing the regenerative braking torque in an automobile as the automobile is slowed or stopped.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A method for controlling regenerative braking in a vehicle having a regenerative braking system, the method comprising:

determining a first vehicle condition when the vehicle is braking;

determining a first predetermined value corresponding to the first vehicle condition;

determining a second vehicle condition; and

reducing regenerative braking torque to zero beginning when the second vehicle condition reaches the first predetermined value.

REFERENCES

The references of record relied upon by the examiner as evidence of obviousness are:

Kidston	US 5,615,933	Apr. 01, 1997
Kuno	US 6,244,674 B1	Jun. 12, 2001
Crombez	US 6,309,031 B1	Oct. 30, 2001
Schneider	US 6,325,470 B1	Dec. 04, 2001
Hara	US 2002/0180266 A1	Dec. 05, 2002

REJECTIONS

Claims 1-5 and 13-20 stand rejected under 35 U.S.C. § 103 as unpatentable over Schneider in view of Hara.

Claims 6-12 stand rejected under 35 U.S.C. § 103 as unpatentable over Schneider in view of Hara, and further in view of Crombez, Kuno or Kidston.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have determined that the applied prior art does not establish the prima facie obviousness of the Appellants' method. Therefore, the rejections on appeal are reversed. Our reasons follow.

In our view, the Examiner has failed to articulate reasoning with rational underpinnings as to why Appellants' claimed subject matter is prima facie obvious. The Examiner states that the values and conditions claimed by Appellants could be just about anything under the sun. Answer 3. If this were the case, it would seem that the Examiner could point to at least one specific example in Schneider or Hara or the combined disclosures of Schneider and Hara that would have taught the methods steps of the claimed subject matter and therefore rendered the claimed subject matter prima facie obvious. While we agree that the values and conditions that the claims refer to are well known, that in and of itself does not render Appellants' claimed method prima facie obvious. Instead, the Examiner must show that these conditions and values either have been used in a method similar to Appellants' method or that such a method would have been prima facie obvious when such steps were combined with predictable results. The

Examiner fails to sustain his burden in this regard.

The Examiner states that “[i]t would have been obvious to the ordinary worker in the art at the time of the invention to have incorporated the teachings of the reduction of regenerative braking force as taught by Hara and Schneider to improve overall drivability of the vehicle.” Answer 4. However, the Examiner fails to state where the precise steps relied on are found in the disclosures of Hara and Schneider and fails to state any rational basis for the combination of any such steps into the method of the claimed subject matter.

On page 5 of the Answer the Examiner states that one of ordinary skill would have found it obvious to have Schneider modified with look up tables, torque maps, or torque curves to adjust the regenerative braking torque. Here again, the Examiner designates no specific method steps found in the prior art and includes no reasoning in support of this conclusion of obviousness. Furthermore, even if it were true that the combined disclosures of Schneider and Hara amounted to an “alternate equivalent method”, this appears to be irrelevant to a legal conclusion of obviousness.

The Examiner states that Appellants’ method steps are broad in scope and that they are well known and inherent in the recited patents. However, the Examiner has failed to state how these steps are necessarily present in the applied prior art.

Finally, the fact that Schneider is capable of measuring the same values and conditions that Appellants measure, is not seen as evidence that Appellants’ claimed *method* is obvious over either the combination of Schneider and Hara, or the combination of Schneider and Hara in view of Crombez, Kuno or Kidston.

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For these reasons, the rejections of all of the claims on appeal are reversed.

REVERSED

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